S.B. CIVIL WRIT PETITION NO.4577/2004
Puran Ram Vs. A.D.J. No.2, Sri Ganganagar & Anr.

Date : 8.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Kailash Khatri, for the petitioner.

Mr. N.L. Joshi, for the respondents.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 6.8.2004 by which the trial court dismissed the petitioner's application under Order 6 Rule 17 C.P.C.

According to learned counsel for petitioner, the petitioner filed suit for specific performance of contract but inadvertently, the petitioner could not properly mention that if the property in dispute is found to be mortgaged with someone else than the petitioner, then the Court may pass appropriate decree directing the defendant to get the mortgage redeemed and transfer the property. For delay, the plaintiff/petitioner submitted that he came to know about the mortgage only when the written statement was filed by the defendant.

The trial court rejected the application only on the ground that the issues have been framed.

I have considered the rival submissions and perused the impugned order.

The trial court rejected the petitioner's application only on the ground that no amendment can be permitted after framing of the issues. The reason given by the trial court is absolutely unsustainable in the eyes of law. Even after amendment of C.P.C., it is provided that the amendment cannot be allowed after commencement of the trial when the Court finds that application for amendment of the pleadings has not been filed with due diligence. The trial court proceeded on the assumption that there is a total bar against permitting the amendment of the pleadings.

However, in view of the fact, that the petitioner is seeking specific performance of contract and law is settled with respect to what are the implied conditions in the agreement for sale of immoveable property, the petitioner can certainly pursue the suit even without amending his plaint that he is entitled to get specific performance of contract and in that contract, there is no condition that the petitioner shall be liable to redeem the mortgage. Meaning thereby, that the transferor agreed to transfer the property without any encumbrance on the property. In the suit for specific performance of the contract, the Court may pass appropriate decree.

In view of the above discussion, though the order dated

6.8.2004 is on the face of it illegal but this Court feels that the amendment is not necessary in the facts of the case.

Accordingly, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya